

Appl. No. 10/716,588
Amdt. dated August 6, 2007
Reply to Office Action of June 4, 2007

REMARKS/ARGUMENTS

Claims 1-20 are pending in this patent application. Applicants provisionally elect Species 1: Claims 1-8, and 11-16 and traverse the Restriction of June 4, 2007.

The Restriction put forth four patentably distinct species:

Species 1: Claims 1-8 and 11-16

Species 2: Claims 9-10

Species 3: Claim 17

Species 4: Claims 19-20.

I. IT WOULD NOT BE A SERIOUS BURDEN FOR THE EXAMINER TO CONTINUE EXAMINING THE APPLICATION ON THE MERITS

MPEP § 803.01 provides that (emphasis added):

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

The Examiner has already searched and examined claims 9-10 (Species 2) and 17 (Species 3) for which he asserted one reference anticipated along with claims 1-8 and 11-16. Claim 9 was amended to remove an article "the" before "contents of the record" in this independent claim. Claim 10 remains unamended. Claim 17 was amended to correct typographical errors and incorporate better phrasing style. These minor amendments do not warrant a change of scope of the subject matter that would warrant a serious burden on the Examiner in search and examination.

II. THE RULES DO NOT PERMIT THE EXAMINER TO ISSUE AN ELECTION REQUIREMENT WHERE THERE IS NO GENERIC CLAIM

The election requirement is traversed because the Examiner is not authorized to require the proposed election of "species". In particular, 37 C.F.R. 1.146, which authorizes the Examiner to require an election of species, applies

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only to "an application containing a generic claim to a generic invention (genus) and claims to more than one patentably distinct species embraced thereby." However, for the instant application, a generic claim that embraces all the identified "Species" 1, 2, 3 and 4 has not been identified. Without such a generic claim identified, the Species 1, 2, 3 and 4 do not constitute species to which the claims properly can be restricted under 37 CFR 1.146 (see MPEP § 806.04).

Conclusion

For at least these reasons, the restriction requirements should be removed, and it is respectfully requested that all the pending claims be examined.

Respectfully submitted,

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